

## Nevada Rules of Civil Procedure Revision Committee Summary

April 25, 2018 Meeting

The fourteenth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on April 25 at 3:00 p.m. The meeting was video conferenced between the Washoe County Bar Center in Reno, the Supreme Court court room in Las Vegas, and the Supreme Court conference room in Carson City. Present in Reno were Judge Elissa Cadish, Discovery Commissioner Wes Ayres, Bob Eisenberg, Bill Peterson, Graham Galloway, and Todd Reese. Present in Carson City was Kevin Powers. Present in Las Vegas were Justice Kristina Pickering, Justice Mark Gibbons, Judge Kimberly Wanker, Discovery Commissioner Bonnie Bulla, Professor Thom Main, Don Springmeyer, Racheal Mastel, Dan Polsenberg, George Bochanis, Steve Morris, and Loren Young.

The Committee first approved the March 14, 2018 meeting minutes.

The Committee then discussed revisions to Rules 16.21, 23, 32, 45, 51, and 59, which have been previously considered. After considering the revisions to Rule 16.21, Justice Pickering moved to recommend the rule, the motion was seconded by Racheal Mastel, and the Committee voted to recommend the rule.

The Committee next considered Rule 23, and agreed that the preference would be to vacate Justice Court Rule 23 and permit a class action to be brought only in district court. But because NRS 4.370 does not expressly exempt class actions from Justice Court, the Committee is wary of inadvertently leaving a subset of class actions that do not meet the district court jurisdictional threshold with nowhere to be brought. The subcommittee believes it should be permissible to aggregate the value of claims to meet the district court jurisdictional threshold. Two proposals were submitted and the Committee preferred the language proposed by the subcommittee, but requested that the reference to injunctive and declaratory relief and to NRS 4.370 be removed from the aggregation subsection. The subcommittee agreed to redraft the rule and present it at the next meeting.

The Committee next considered Rule 32, and agreed to modify the rule to remove “interlocutory proceeding” from Rule 32(a)(1) because such a proceeding was encompassed by the word “hearing.” As amended, George

Bochanis moved to recommend the rule, the motion was seconded by Justice Pickering, and the Committee voted to recommend the rule.

The Committee next considered Rule 51. While the Committee agreed that a reference to preliminary jury instructions should be included in the rule, the proposed text placed too much emphasis on the preliminary instructions. The Committee agreed to revise the draft to delete the proposed text concerning preliminary instructions and replace it with a subsection simply stating that nothing in Rule 51 precludes the parties from requesting, or the district court from giving, preliminary jury instructions. The Committee requested that the subcommittee circulate the revisions via email prior to the next meeting so that the revised Rule could be summarily approved.

The Committee next considered Rule 45, with modifications from the previously approved version of the Rule. After discussion, Todd Reese moved to recommend the rule, the motion was seconded by Judge Cadish and Don Springmeyer, and the Committee voted to recommend the rule.

The Committee passed on Rule 59, which will be circulated by email or presented at the next meeting.

The Committee discussed the following subcommittee rule recommendations.

1) Time and Service of Process Subcommittee (NRCP 4, 4.1, 5, 6, NRAP 4, 25, 26, 27, and the NECFR)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Judge Jim Wilson, Dan Polsenberg, Don Springmeyer, Racheal Mastel, Kevin Powers, and Todd Reese

The Committee next discussed NRCP 5, NRCP 6, and NRAP 26. Justice Pickering advised the Committee that the subcommittee had examined the e-filing and e-service rules. The subcommittee is concerned that the current method of e-filing, submitting a document that goes into a queue for clerk review, which then may be filed the same day or in some cases several days later, loses the benefits of electronic filing and service. The subcommittee discussed instantaneous submission and filing followed by clerk review, as is done in the federal system, but the clerks of the Second and Eighth Judicial Districts, and of the Supreme Court, objected to that approach. A compromise approach more palatable to the clerks and the IT departments but that also takes advantage of instantaneous electronic circulation is to send service to all parties upon

submission of the document to the e-filing system, to then place the document in a queue for clerk review, and then to notify all parties upon the clerk's acceptance and filing or rejection of the document. The time to respond to a document will begin upon submission. If the document is subsequently rejected, the responding party will no longer need to respond to the document and the time to respond will be calculated anew when the document is resubmitted. This will have the benefit of transparency and notifying all parties when action is taken in an action. Discussions with practitioners indicate that they are overwhelmingly in favor of this approach rather than the existing approach. Rule 6 and NRAP 26 were modified accordingly to remove the extra three days for electronic service. Rule 5, which was previously approved, was found not to need alterations. Don Springmeyer and Judge Wanker, echoed the opinion that altering the e-filing rules in this manner was a leap forward. The Committee noted that this mechanism may require modification of the time to respond to a motion so that a party is not stuck racing to prepare a response before the clerk's office rejects a filing. Todd Reese is reviewing the NRAP time deadlines and will circulate proposed changes to Kevin Powers, Bob Eisenberg, and Dan Polsenberg prior to the Committee's consideration of the changes. After discussion, Don Springmeyer moved to recommend the rules, the motion was seconded by Judge Cadish, and the Committee voted to recommend the rules.

## 2) NRCP 16.2, 16.205, 16.21, and 16.215 Subcommittee

Chair: Racheal Mastel

Members: Todd Reese, Judge Kim Wanker, Justice Mark Gibbons

The Committee next discussed NRCP 16.2, 16.205, and 16.215. Racheal Mastel explained that the majority of the changes were stylistic and did not substantively change the rules. The Committee questioned why we had both 16.2 and 16.205, and Justice Gibbons explained that the Committee that drafted the rules had considered that question and decided that two rules were necessary. Kevin Powers recommended examining the structure of the NRCP and placing 16.2, 16.205 and other rules governing discovery in family actions within one subsection of the rules. The Committee also recommended that the title of 16.215 be change to "Child Witnesses in Custody Proceedings." With those changes, Racheal Mastel moved to recommend the rules, the motion was seconded by Justice Gibbons, and the Committee voted to recommend the rules.

### 3) NRCP 80 Subcommittee

Chair: George Bochanis

The Committee next discussed NRCP 80. The Committee expressed concerns regarding the operation of NRCP 28, 29, 30, 32, and 80 together with NRS 240.004. In 1995 the phrase “Taking a deposition” was removed from Notaries’ duties, although Notaries’ duties still include “Administering an oath or affirmation.” The concern is whether a notary may validly give an oath at a deposition and then video tape a deposition. The Committee views this as an access to justice issue, because stenographic reporting of a deposition is often expensive, while a video-taped deposition, which may or may not be later transcribed, is less expensive. The Committee also discussed removing sections (a) and (b) from Rule 80 as they are repeated in Rules 28 and 30. The Committee passed on the rule so that the subcommittee could reconsider and redraft it.

### 4) Time and Service of Process Subcommittee (NRCP 4, 4.1, 5, 6, NRAP 4, 25, 26, 27, and the NECFR)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Judge Jim Wilson, Dan Polsenberg, Don Springmeyer, Racheal Mastel, Kevin Powers, and Todd Reese

The Committee next discussed NRCP 4. Todd Reese and Racheal Mastel gave a brief overview of the rule. The Rule has been rewritten and reorganized, so no redline against NRCP 4 or FRCP 4 can be prepared. Rule 4(a)(b) and (c) are reorganized, but largely substantively unchanged. Rule 4(d), waiver, is adopted from the federal rule. Rule 4(e) is substantively unchanged, and Rule 4(f) is revised—the subcommittee is waiting on input from the Guardianship Committee regarding minors and incapacitated persons. Rule 4(g) is revised, with secretary of state service now requiring court approval and a new section added permitting secretary of state service in the state in which the business entity was formed, if permitted by that state. The Committee asked that Rule 4(g)(3)(A)(i) be reworded to omit the “may seek leave of court” and insert a “must seek leave of court.” Rule 4(h) is new, specifying service upon governmental entities. Rule 4(i) and (j) are new and respectively govern service outside of Nevada but within the United States, and service outside the United States. Rule 4(k) is retained from the prior NRCP 4(e)(3). Rule 4(l)(1) is new, permitting a district court to craft a service solution that meets due

process. Rule 4(l)(2) is service by publication, which has been revised. Rule 4(m) is new, and permits the district court to order notice, not service, by email or text or voice message, if the defendant's email or phone number is known, when the plaintiff is required to mail the summons and complaint to the defendant's last-known address. Rule 4(n) is retained from the prior NRCP 4(e)(2). Rule 4(o) and (p) were revised. The existing NRCP 4(f) was deleted as superfluous. After initial presentation of the rule, discussion was curtailed due to time concerns. Because it is a long rule, the Committee members are urged to read and consider Rule 4 before the next meeting.

#### 5) Everything Else Subcommittee

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

Due to time concerns, rules 16, 62, 65, 66, 67, 70, and 77 were not considered and were passed to the next meeting.

A discussion was then held of issues of general concern to the Committee members. The Committee agreed that minor rewrites to rules that were not approved for recommendation could be circulated via email prior to the next scheduled meeting so that they could be summarily approved if there were no objections without taking up the Committee's time at the meeting. Justice Gibbons and Justice Pickering advised the Committee that the next Committee meeting scheduled for May 9, 2018, would be vacated for lack of rules for the Committee to consider. The meeting was rescheduled for May 23, 2018, at 3:00 pm. The June meeting has also been scheduled for June 20, 2018, at 3:00 pm.

There being no further business to come before the Committee, the meeting was adjourned at 5:15 p.m.

Respectfully submitted,  
Kristina Pickering and Mark Gibbons  
Co-Chairs